IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10779 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABHILASHA COOP HOUSING SOC LTD

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL WITH MR SHALIN N MEHTA for Petitioner

MR ND GOHIL, AGP, for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR UP VYAS for Respondents No. 3 to 17

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/08/2000

ORAL JUDGEMENT

1. The petitioner is a co-operative housing society duly registered with the Registrar of Co-operative Societies. The petitioner-society is aggrieved by an

order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, on August 27, 1998 in SRD.BKP.SUO MOTU.AMD.2/94 (Annexure-C) arising out of an order passed by the District Development Officer, Ahmedabad, on April 3, 1992 (Annexure-A) granting permission for conversion to Non-Agricultural Use of land bearing Survey No.131/4 of Vastrapur, taluka City, converted to Final Plot No.46 of T.P. lScheme No.1 of Vastrapur, admeasuring 4798 sq. metres for the purpose of construction of residential house.

2. The facts of the case can be broadly stated thus:-

2.1 The petitioner co-operative society purchased land bearing Survey No.131/4 or village Vastrapur, taluka City, Ahmedabad from respondents No.3 to 17. The land was purchased by three registered sale deeds on March 31, 1992 and since then, the petitioner-society is the occupant-owner of the said parcel of land. Thereafter, Vastrapur Town Planning Scheme No.1 came to be implemented and under the scheme, the said land was constituted into final plot No.46 admeasuring 4798 sq. metres. The said piece of land was originally owned by Hari Amba and in village forms 7, 7A and 12, he has been shown occupant since 1929-30. The tenancy rights were indicated as that of self. An entry appears to have been made in the records indicating this land to be of 'new tenure'. This term 'new tenure' or 'restricted tenure' does not appear to have been defined either in the Bombay Land Revenue Code or in the Rules framed thereunder. But it is generally taken to be a restriction on its alienability and its partibility. In 1980, the land was sought to be converted to Non-Agricultural use, which permission was granted upon certain conditions, one of which was payment of premium equivalent to 60 times of revenue assessment, which was duly paid. Because it was found that entry "new tenure" was taken to be restricting its alienability, the City Deputy Collector was moved to inquire about the authenticity of the entry of new tenure and its implication or effect on the alienability and partibility of the land in question. The City Deputy Collector, after taking into consideration the records as well as various circulars issued by the Government from time to time came to conclusion that the entry of new tenure land was made in 1956 on basis of a circular issued by the Government and, as such, there was no basis other than the circular which would make the land inalienable or impartible. The learned City Deputy Collector got an inquiry made through District Inspector of Land Records and found that the land was of private

ownership and there was no entry whatsoever to indicate the nature of right and, therefore, found that the entry No.1074 made on February 1, 1956 is incorrect. The land is ancestral and, therefore, entry No.1074 was ordered to be removed from the record.

2.2 The said order was taken in revision by the learned Collector, Ahmedabad, in exercise of powers under Land Revenue Rule No.108(6) and the order came to be set aside on the basis of the fact that the entry has been existing since 1956. An application for converting the land to Non-Agricultural use was made in 1980 and premium therefor has also been paid. The case of the land owners that they were unaware about the erroneous entry of new tenure land, therefore, was not found to be acceptable by the learned Collector. It was observed that in village Form No.7 and 12, the endorsement of new tenure is made since 1940 and has remained there for about 40 years, which cannot be overlooked. It was observed that the petitioner has paid premium for conversion to Non-Agricultural use and it has not even claimed refund therefor and, therefore, it is estopped from praying for removal of the entry indicating the land to be of new tenure.

2.3 Thereafter, the learned Secretary (Appeals), Revenue Department, issued a show cause notice on February 1, 1994 (Annexure-B), calling upon respondents No.3 to 17 to lshow cause why the N.A. permission granted by the D.D.O. should not be cancelled. Notice was suitably replied to and the learned Additional Chief Secretary passed the impugned order Annexure-C observing that the land is of new tenure and, therefore, there is a restriction on its alienability and partibility and, therefore, the permission is erroneously granted. It was observed that the order passed by the City Deputy Collector cancelling the entry No.1074 has been set aside bsy the Collector by his order dated November 26, 1992 and, therefore, the N.A. permission is required to be cancelled. The petitioner is, therefore, before this Court with this petition under Articles 226 and 227 of the Constitution.

3. Mr. A.J. Patel, learned counsel appearing for the petitioner, submitted that the learned Deputy Collector, after due inquiry found that the entry of the land being of new tenure was made only on basis of a circular issued by the Government and there was nothing to indicate that the land carried a restricted tenure putting a restriction on its alienability and partibility. Even according to the Government's own

circulars, endorsement in the records of the land being of new tenure by itself would not indicate that the land is inalienable and/or impartible and in such situations, when the questions arise, the authority concerned should take a decision on question of alienability and partibility of the land after making due inquiry. These circulars have been overlooked both by the learned Collector as well as the Additional Chief Secretary. Mr. Patel, therefore, urged that the petition may be allowed and the order of the learned Additional Chief Secretary impugned in this petition may be quashed and set aside and the order of the learned District Development Officer may be confirmed.

4. Mr. N.D. Gohil, learned Assistant Government Pleader, has vehemently opposed this petition. According to him, the petitioner has not agitated the question of alienability and/or partibility of the land or its restricted/new tenure for 40 years. Even after 1980 when the land was sought to be converted to Non-Agricultural use, it has not challenged the entry of new tenure. On the contrary, it has paid the premium as required accepting that the land is of new tenure and, therefore, the order impugned in this petition is correct and legal and may not be interfered with.

5. Before adverting to the facts, certain relevant circulars issued by the Government need to be considered. In the first instance, a circular came to be issued by the then Government of Bombay on September 1, 1955 (Annexure-B) wherein it has been stated that expression 'new tenure' came to be introduced for the first time in 1901 by adding a new provision to Section 68 of the Code and under that Section, conditions can be attached to the grant and conditions may be of inalienability or impartibility or both. It was clarified that mention of words 'new tenure' in village form by itself would not indicate that the grant is subject to inalienability or impartibility and, therefore, it would not be legally feasible to infer that particular condition either of inalienability or impartibility was attached to the land in each of such cases and, therefore, land cannot be forfeited only on basis of such entries and, therefore, such entry should be made more accurately in village forms No.6, 7 and 12. Attention of this Court is also drawn to a subsequent circular issued by the Government of Gujarat on March 16, 1982. The circular is on the same lines as the earlier circular.

6. Now, if the facts of the present case are seen in light of the contentions raised by the parties, it is to

be noted that learned City Deputy Collector held the inquiry into the question about the alienability and/or partibility of the land in question. He found that entry No.1074, on basis of which the land is shown to be of new tenure, appears to have been made by mistake, in absence of order without giving notice. No records in this regard were available with the Mamlatdar concerned. The learned City Deputy Collector examined "Prati Book and Kayam Kharada" to ascertain that the land in question was ancestral land inherited by the occupants-owners and, therefore, the entry of the land being of new tenure and being impartible made vide entry No.1074 is an error and, therefore, it was ordered to be deleted. The authorities above the City Deputy Collector, namely, learned Collector as well as the Revisional Authority, namely the learned Additional Chief Secretary (Appeals) both have not found that these findings of the learned City Deputy Collector were not correct or erroneous, but they proceeded on a premise that because the entry is there for about 40 years and because no objection is made to such entry for such a long time, it has to be accepted as correct and this is only an attempt on part of the land owners to evade the payment of revenue to the Government. When the Government's own circular indicates that mention of the land being of new tenure would not by itself indicate inalienability or impartibility, an inquiry therefor should be held and when such inquiry is held and found that such an entry was made by mistake, mere existence of such entries cannot be permitted to be taken as having been acquiesced by the land owners, at least not in the Indian background where the level of literacy is very poor, leave aside the knowledge of law. People come to know the effect of " " (Navi Sharat = New Tenure) only when they are required to alienate the land and are not permitted to do so.

7. In this regard, similar questions arose before this Court in Special Civil Application No.7878 of 1996 and this Court (Coram: S.D. Dave, J.), by decision dated February 4, 1997, observed thus:-

> "....It should not be overlooked that the declaration or the treatment of a piece of land as a new tenure land has got serious repercussions and the right of the occupants are being limited in many respects. The new tenure land could not be transferrer or alienated without having obtained the prior express permission of the authorities concerned. Moreover, the said land would be required to be utilized and occupied in a manner which is in

> consonance with the tenure under which the same has been granted. Looking to these serious repercussions which would follow from the factum of making any such entry would oblige everybody concerned to look for the orders of the circumstances in which a particular piece of land is said to be a land of a new tenure..... ..... A perusal of the Government files would go to show that, despite the best efforts, the Revenue authorities were not in a position to lay their finger on any order under which this land bearing Survey No.69 could be said to be a land of a new tenure. The matter does not rest here because, the Government and the District Survey Officer were trying to find out any order under which such restricted tenure would have been notified in the land revenue records. All the efforts have failed. It appears that the Deputy Secretary, Revenue Department, under a communication dated July 11, 1994 had requested the Collector, Ahmedabad to find out the origin of such an entry, but, ultimately, the matter was required to be referred to the village Talati with a request to find out any such record under which such an entry could have been justified. The Talati-cum-Secretary of the village Panchayat also, upon verification of the entire revenue record, was of the opinion that no such entry or order could be located under which the land could be said to be the land of a new tenure."

With these observations, the court directed deletion of the entry indicating the land to be of new tenure.

7.1 In the instant case also, the learned City Deputy Collector had held an inquiry. He got the enquiries made through D.I.L.R. to go to the root of the entry in question indicating the land to be of new tenure, but could not find anything and, therefore, he ordered the entry to be deleted. As has been observed in the earlier decision in Special Civil Application in Special Civil Application No.7878 of 1996, in the instant case also, in absence of any material, this entry could not have been taken at face value to indicate that the land is inalienable and impartible as has been done by learned Collector and learned Additional Chief Secretary (Appeals).

8. In the case of Chhotabhai Dahyabhai Thakore v. State of Gujarat & Ors., as reported in 38(3) GLR 2016, this Court observed that mere mention of words 'new

tenure' in the revenue records is not a sufficient proof of inalienability or impartibility of the land. There must be additional and reliable proof of this fact.

9. It may be noted that the petitioner has preferred Special Civil Application No.10776 of 1998 which has been heard today and allowed, whereby the order of the Collector, Ahmedabad and that of the Additional Chief Secretary (Appeals), Revenue Department, setting aside and the order of the City Deputy Collelctor deleting entry No.1074 have been set aside and the order of the City Deputy Collector is restored. The reason for which the N.A. permission granted is cancelled now, therefore, does not survive. The petition, therefore, deserves to be allowed for the foregoing reasons.

0. For the foregoing reasons, the petition is allowed. The impugned order, i.e. the order passed by the Additional Chief Secretary (Appeals), Revenue Department dated August 27, 1998 (Annexure-C) is hereby quashed and set aside. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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